

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANTHONY BAILEY, et al.,

Plaintiff,

vs.

CLARK COUNTY, et al.,

Defendants.

Case No. 2:12-cv-01954-JCM-CWH

ORDER

Defendants Suey, Flippo, and Kelso have removed this action from state court, and defendant Aspiazu has joined in the removal. These defendants have filed an answer (#9).

The court has reviewed the complaint. It will dismiss three defendants and some legal claims.

When a “prisoner seeks redress from a governmental entity or officer or employee of a governmental entity,” the court must “identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Allegations of a pro se complainant are held to less stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam).

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” . . . [T]he pleading standard Rule 8 announces does not require “detailed factual allegations,” but it demands

1 more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that
 2 offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action
 3 will not do.” Nor does a complaint suffice if it tenders “naked assertion[s]” devoid of
 4 “further factual enhancement.” . . .

5 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim to
 6 relief that is plausible on its face.” A claim has facial plausibility when the plaintiff pleads
 7 factual content that allows the court to draw the reasonable inference that the defendant is
 8 liable for the misconduct alleged. The plausibility standard is not akin to a “probability
 9 requirement,” but it asks for more than a sheer possibility that a defendant has acted
 10 unlawfully. Where a complaint pleads facts that are “merely consistent with” a defendant’s
 11 liability, it “stops short of the line between possibility and plausibility of ‘entitlement to
 12 relief.’”

13 Ashcroft v. Iqbal, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (citations omitted).

14 Plaintiffs have named the Clark County Detention Center as a defendant. Plaintiffs claim
 15 incorrectly that the Clark County Detention Center is a public entity established by the laws of the
 16 State of Nevada. It is not. The Clark County Detention Center is an inanimate building, and
 17 plaintiffs cannot sue a building. The court dismisses the Clark County Detention Center.

18 Plaintiffs have sued Clark County and Lt. Kelly, who is an officer at the Clark County
 19 Detention Center. Plaintiffs do not allege any involvement of Clark County in any cause of action.
 20 Other than allegations that somebody else failed to train Lt. Kelly, plaintiffs do not allege any
 21 personal involvement by Lt. Kelly in any cause of action. The court dismisses Clark County and Lt.
 22 Kelly.

23 Plaintiffs attempt to raise claims pursuant to 18 U.S.C. §§ 241 and 242, and Nev. Rev. Stat.
 24 §§ 212.010, 212.020, and 252.190. None of these sections create a private right of action. The
 25 court dismisses any claims pursuant to these sections.

26 Plaintiffs attempt to raise claims pursuant to the Fourth Amendment. They allege that they
 27 are being deprived of outdoor exercise and proper ventilation. Those allegations do state a claim
 28 upon which relief can be granted. Keenan v. Hall, 83 F.3d 1083, 1089-90 (9th Cir. 1996), amended
 by 135 F.3d 1318 (9th Cir. 1998). However, the legal bases for these allegations are the Eighth
 Amendment, if the plaintiffs are convicted inmates, or the Fourteenth Amendment, if the plaintiffs
 are pre-trial detainees. The Fourth Amendment is inapplicable to these allegations. The court
 dismisses any claims pursuant to the Fourth Amendment.

Plaintiffs have submitted a motion for appointment of counsel (#8).

1 There is no constitutional right to appointed counsel in a § 1983 action. However, in
2 "exceptional circumstances," a district court may appoint counsel for indigent civil litigants
3 pursuant to 28 U.S.C. § 1915[(e)(1)]. To decide whether these exceptional circumstances
4 exist, a district court must evaluate both the likelihood of success on the merits and the
ability of the petitioner to articulate his claims pro se in light of the complexity of the legal
issues involved.

5 Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997) (internal quotations and citations omitted),
6 withdrawn on other grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998) (en banc). The court finds that
7 exceptional circumstances do not exist in this case, and the court denies the motion.


8 IT IS THEREFORE ORDERED that defendants Clark County, Clark County Detention
9 Center, and Lt. Kelly are **DISMISSED** from this action.

10 IT IS FURTHER ORDERED that plaintiffs' claims pursuant to 18 U.S.C. §§ 241 and 242,
11 Nev. Rev. Stat. §§ 212.010, 212.020, and 252.190, and the Fourth Amendment are **DISMISSED**
12 from this action.

13 IT IS FURTHER ORDERED that plaintiffs' motion for appointment of counsel (#8) is
14 **DENIED**.

15 IT IS FURTHER ORDERED that this action shall proceed in accordance with the court's
16 minute order (#3) and the answer (#9) of the remaining defendants.

17 DATED: December 7, 2012.

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20 JAMES C. MAHAN
United States District Judge
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